PENDENT PARTY JURISDICTION: CONGRESS GIVETH WHAT THE EIGHTH CIRCUIT TAKETH AWAY

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INTRODUCTION

Congress recently codified the doctrine of pendent party jurisdiction in the federal courts in response to the United States Supreme Court's severe restriction of the doctrine in Finley v. United States. In so doing, Congress revitalized the doctrine of pendent party jurisdic-

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Public Law 101-650, entitled the Judicial Improvements Act of 1990, contains eight titles which range in subjects from Civil Justice Reform (Title I) and Judicial Discipline (Title IV) to Copyright Protection for Architectural Works (Title VII) and Rental of Computer Software Programs (Title VIII). How these last two subjects relate to judicial improvements is a question which is beyond the scope of this note. The Federal Courts Study Committee Implementation Act of 1990 is contained in Title III.

tion and the doctrine’s tumultuous history should now come to a close.

The codification of pendent party jurisdiction is of particular importance to plaintiffs in the Eighth Circuit. While the Finley decision sharply curtailed the exercise of pendent party jurisdiction in all federal courts, the Eighth Circuit Court of Appeals effectively eliminated the doctrine altogether in the Eighth Circuit when the court interpreted Finley in Lockard v. Missouri Pacific Railroad.3

The need for congressional action is best illustrated by analyzing the dilemma faced by plaintiffs who have mixed federal and state law claims but who are denied pendent party jurisdiction. Leland Lockard’s situation presents a good example of this difficulty. The facts which gave rise to the court’s decision in Lockard present an interesting case study of how the doctrine as it is now codified may be applied in the future.

Leland Lockard worked in Nebraska for the Missouri Pacific Railroad Company (MoPac) as a fireman for a local MoPac train crew.4 Rosella Ray owned a boarding house under contract with MoPac to provide lodging facilities for MoPac train crews.5 On the morning of December 15, 1984, Leland Lockard slipped and fell down the steps of Rosella Ray’s boarding house and injured his back and hip.6

Lockard brought an action against MoPac under the Federal Employers’ Liability Act (FELA).7 Lockard also sued Ray for negligence under Nebraska law, and his wife brought suit against Ray under Nebraska law for loss of consortium.8 No diversity of citizenship existed between the Lockards and Ray. Thus, no independent basis for federal jurisdiction existed for the negligence action against Ray.9 The United States District Court for the District of Nebraska allowed all claims to proceed, and a jury found for the Lockards on each claim and awarded them damages.10

4. Id. at 300.
5. Id. Ray, whose boarding house was located in Crete, Nebraska, had a one year written agreement with the railroad to “furnish, maintain and operate motel lodging facilities” and to provide around the clock motel management. Id. (quoting the written agreement).
6. Leland Lockard and his crew arrived in Crete at approximately 10:00 at night on December 14, and checked into Ray’s boarding house. Four to five inches of snow had fallen by the time the crew arrived. The next morning a thin glaze of ice covered the boarding house steps. At 6:30 a.m. Lockard left the boarding house to eat breakfast, then returned to his room. When he left his room at 7:15 a.m. to report for work, he slipped on the top step and fell down the steps. Id.
7. Id. (citing 45 U.S.C. §§ 51-60 (1982)).
8. Id.
9. Id. at 301. The plaintiffs, Leland and Lynette Lockard, never asserted that diversity under 28 U.S.C. § 1332 (1988) existed between the parties. Id. at 301 n.2.
10. Id. at 300. The jury awarded $600,000 for the FELA claim against MoPac,
MoPac and Ray appealed. The Eighth Circuit Court of Appeals vacated the judgment against Ray and ruled that the district court lacked subject matter jurisdiction over the state claims raised against Ray by the Lockards. The court held that the Supreme Court's 1989 decision in *Finley v. United States* precluded pendent party jurisdiction over the Lockards' claims against Ray.

The *Lockard* decision all but extinguished the doctrine of pendent party jurisdiction in the Eighth Circuit. Congress then acted in response to problems such as those illustrated by the Eighth Circuit's decision in *Lockard v. Missouri Pacific Railroad*. Although congressional action came too late for the Lockards, future litigants will benefit from the new legislation.

This Note traces the historical development of pendent party jurisdiction and examines the Supreme Court's decision in *Finley v. United States*. The Note examines the Eighth Circuit's analysis in *Lockard* and the court's restrictive interpretation of *Finley*, which effectively eliminated pendent party jurisdiction in the Eighth Circuit. The potential ramifications, if Congress had chosen not to act, are also considered. Finally, the Note explores the limitations and probable effects of Congress' codification of the doctrine of pendent party jurisdiction, and the limitations and probable effects of Congress' action.

I. HISTORY AND DEVELOPMENT OF THE DOCTRINE OF PENDENT PARTY JURISDICTION

A. Pendent Claim Jurisdiction

Federal courts are courts of limited jurisdiction. The United States Constitution limits federal court jurisdiction to those types of cases described in Article III, Section 2, which empowers Congress

11. *Id.* at 303. None of the parties raised the issue of the federal court's jurisdiction over Ray. The issue was raised for the first time by the court of appeals at oral argument. *Id.* at 301 n.1. The court held that the issue must be evaluated in light of *Finley*. *Id.* at 301. The parties briefed the jurisdictional issue, and the court decided *Lockard* on January 19, 1990. *Id.* at 299.


13. *Lockard*, 894 F.2d at 301-03.

14. The Constitution provides:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—
to establish the "inferior" federal courts. Consequently, federal courts may exercise jurisdiction only where the Constitution allows or where Congress has supplied such jurisdiction by statute.

Over the years, these jurisdictional limitations posed a problem for the federal courts in cases involving both federal and state law claims. Tension arose between the jurisdictional limitations of the federal courts and the notions of judicial economy and convenience. Federal courts needed an instrument by which they could join jurisdictionally insufficient state law claims with related, jurisdictionally sufficient claims which were properly in federal court. To fulfill this need, federal courts developed the doctrine of pendent claim jurisdiction. Under this doctrine, federal courts may join jurisdictionally sufficient claims with related state law claims which, by themselves, are jurisdictionally insufficient.

The origins of pendent claim jurisdiction date back at least to 1933. In United Mine Workers v. Gibbs, the United States Supreme Court held that a federal court could exercise jurisdiction over both claims as long as the federal claim was substantial. In so ruling, the Court adopted the following test:

The distinction to be observed is between a case where two distinct grounds in support of a single cause of action are alleged, one only of which presents a federal question, and a case where two separate and distinct causes of action are alleged, one only of which is federal in character. In the former, where the federal question averred is not plainly wanting in substance, the federal court, even though the federal ground be not established, may nevertheless retain and dispose of the case upon the non-federal ground; in the latter it may not do so upon the non-federal cause of action.

Id. at 246 (emphasis in original). For a more detailed discussion of the origin of pendent jurisdiction, see Comment, supra note 14, at 450-52.

See Hum v. Oursler, 289 U.S. 238 (1933). Hum involved a federal copyright claim and a state unfair competition claim. Both claims arose out of identical facts. The Supreme Court held that a federal court could exercise jurisdiction over both claims as long as the federal claim was substantial. In so ruling, the Court adopted the following test:

The distinction to be observed is between a case where two distinct grounds in support of a single cause of action are alleged, one only of which presents a federal question, and a case where two separate and distinct causes of action are alleged, one only of which is federal in character. In the former, where the federal question averred is not plainly wanting in substance, the federal court, even though the federal ground be not established, may nevertheless retain and dispose of the case upon the non-federal ground; in the latter it may not do so upon the non-federal cause of action.

Id. at 246 (emphasis in original). For a more detailed discussion of the origin of pendent jurisdiction, see Comment, supra note 14, at 450-52.
Court adopted the current standard to determine whether pendent claims are sufficiently related to the underlying cause of action.\(^2\) Under *Gibbs*, a federal court may exercise pendent claim jurisdiction whenever "the federal and non-federal claims 'derive from a common nucleus of operative fact' and 'are such that a plaintiff would ordinarily be expected to try them in one judicial proceeding.' "\(^2\)

The Constitution permits pendent claim jurisdiction only in cases which meet the *Gibbs* standard.\(^2\)

**B. Pendent Party Jurisdiction**

Pendent party jurisdiction\(^2\) evolved from and expanded the more established doctrine of pendent claim jurisdiction. Under pendent


\(^21\). Id. at 725.

Pendent jurisdiction, in the sense of judicial power, exists whenever there is a claim "arising under [the] Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . ," and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional "case." The federal claim must have substance sufficient to confer subject matter jurisdiction on the court. The state and federal claims must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of federal issues, there is power in the federal courts to hear the whole.

*Id.* (emphasis in original) (citation and footnotes omitted).


\(^23\). Id. at 548-49.

\(^24\). The doctrine of pendent party jurisdiction should not be confused with the doctrine of ancillary jurisdiction. Although the two doctrines are related, they are nevertheless distinct and serve different purposes. "Traditionally, ancillary jurisdiction refers to joinder, usually by a party other than the plaintiff, of additional claims and parties added after the plaintiff's claim has been filed." Alumax Mill Prods. v. Congress Fin. Corp., 912 F.2d 996, 1004 (8th Cir. 1990) (quoting Baylis v. Marriott Corp., 843 F.2d 658, 663 (2d Cir. 1988)). Ancillary jurisdiction usually arises in complex multiple party litigation involving third-party defendants, compulsory counter-claims, and cross-claims. Ancillary jurisdiction is primarily a mechanism used by defendants and third parties whose interests would be inadequately protected if their claims were disallowed in the ongoing federal case. *Id.*

Section 1367 does not distinguish between pendent and ancillary jurisdiction. Instead, the two concepts are lumped together under the term "supplemental jurisdiction." 28 U.S.C. § 1367 (Supp. 1991). See Mengler, *The Demise of Pendent and Ancillary Jurisdiction*, 1990 B.Y.U. L. Rev. 247. "Most commentators believe that there is no meaningful distinction between pendent and ancillary jurisdiction. The literature has come to refer to these jurisdictional bases as supplemental jurisdiction." *Id.* at 247 n.3 (citations omitted). Mengler was a consultant to the Federal Courts Study Committee and prepared a previous version of the article for the Committee. *Id.* at 247. The author obviously won the respect of the Committee; the Committee and ultimately Congress adopted both the term "supplemental jurisdiction" and the author's proposal to codify pendent party jurisdiction. See also Mengler, *Burbank &
party jurisdiction, a pendent state claim may be appended to a claim which is jurisdictionally proper in federal court but asserted against a different party. While the federal courts readily accepted pendent claim jurisdiction, the concept of pendent party jurisdiction was not similarly embraced.

Before the Supreme Court's decision in Finley, the Court's approach toward pendent party jurisdiction was inconsistent. While implicitly recognizing the doctrine, the Court had not expressly approved of the doctrine's use. Prior to Finley, the Supreme Court twice avoided ruling on the issue of pendent party jurisdiction. In Moor v. County of Alameda, the Supreme Court had an opportunity to resolve the dispute among the circuit courts over the issue of pendent party jurisdiction. Despite the opportunity to resolve the issue, which the Court termed "a subtle and complex question with far reaching implications," the Court decided the case on other grounds. Two years later, in Philbrook v. Glodgett, the Court had another opportunity to rule on the issue of pendent party jurisdiction and again chose to avoid this "subtle and complex question."
In 1976, the Supreme Court again addressed the issue of pendent party jurisdiction in *Aldinger v. Howard*. In *Aldinger*, a fired county worker brought federal claims under 42 U.S.C. § 1983 against several individual defendants and appended a related state claim against Spokane County, Washington. The Court held that the district court did not have statutory jurisdiction to join a municipal corporation in order to assert a state law claim.

While the *Aldinger* plaintiff’s claims unquestionably met the Court’s “common nucleus” standard under *Gibbs*, the Court held that when a completely new party is added, a significant legal difference exists and further analysis is necessary. The Supreme Court concluded that “[r]esolution of a claim of pendent party jurisdiction calls for careful attention to the relevant statutory language.” Accordingly, the Court examined the jurisdictional statute behind section 1983. The Court reasoned that because section 1983 precluded direct action against counties, an action could not be brought against a county indirectly by means of pendent party jurisdiction.

The exercise of the District Court’s jurisdiction over the [pendent party]... resulted in no adjudication on the merits that could not have been just as properly made without the [pendent party], and has resulted in no issuance of process against [him] which he has properly contended to be wrongful before this Court.

*Id.* at 722.

31. *Id.* at 1 (1976).

32. *Id.* at 3-5. At the time *Aldinger* was decided, a federal claim based on section 1983 was unavailable against the county because counties were “excluded from the ‘person[s]’ answerable to the plaintiff” under section 1983 and were thus excluded from liability under the statute. *Id.* at 16 (citing *Monroe v. Pape*, 365 U.S. 167, 187-90 (1961)). The Supreme Court later overruled *Monroe* in *Monell v. New York City Dep’t of Social Servs.*, 436 U.S. 658, 663 (1978).


34. *Id.* at 14-15 (citing United Mine Workers v. *Gibbs*, 383 U.S. 715, 725 (1966)).

35. *Id.* at 17. Before a federal court may assert pendent party jurisdiction, that court “must satisfy itself not only that Art. III permits it, but that Congress in the statutes conferring jurisdiction has not expressly or by implication negated its existence.” *Id.* at 18.


The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person... to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States ...

*Id.* § 1343(a).

37. *Aldinger*, 427 U.S. at 17. The majority stated:

Parties such as counties, whom Congress excluded from liability in § 1983, and therefore by reference in the grant of jurisdiction under § 1343(3), can argue with a great deal of force that the scope of that “civil action” over which the district courts have been given statutory jurisdiction should not be
Two years after Aldinger, the Supreme Court again faced the issue of pendent party jurisdiction in Owen Equipment & Erection Co. v. Kroger. The plaintiff in Owen brought a negligence claim in federal court under 28 U.S.C. § 1332 based on diversity between the parties. After the district court granted the original defendant's summary judgment motion, the only claims which remained were against a non-diverse third-party defendant. Because the Court held that section 1332 required "complete diversity," the Court refused to apply pendent party jurisdiction to avoid this requirement and dismissed the case.

The Court in Aldinger and Owen appeared to recognize the doctrine of pendent party jurisdiction. However, the Court refused to apply the doctrine when the jurisdiction-conferring statute either expressly or implicitly denied such jurisdiction. The Court's focus on statutory interpretation led to a split among the circuit courts of appeals regarding pendent party jurisdiction. Only the Ninth Circuit has categorically refused to recognize the doctrine. The other circuits, which had accepted the idea of pendent party jurisdiction, had differences of opinion as to the proper application of the doctrine.

For instance, the Second and Fifth Circuit Courts of Appeals so broadly read as to bring them back within that power merely because the facts also give rise to an ordinary civil action against them under state law.

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39. Federal jurisdiction exists over "all civil actions where the matter in controversy exceeds $50,000 and is between citizens of different States." 28 U.S.C. § 1332(a) (1988). The Supreme Court has interpreted this statute as requiring complete diversity among the parties. See Owen, 437 U.S. at 367-69.
40. Owen, 437 U.S. at 373-74. In Owen, a woman who lived in Iowa sued for the wrongful death of her husband. Her husband was electrocuted when the crane next to which he was walking struck a high tension power line. Plaintiff originally brought her action in the district court of Nebraska against the Omaha Public Power District (OPPD). Federal jurisdiction was based on diversity, because OPPD was a Nebraska corporation and the plaintiff was a citizen of Iowa. Id. at 367. OPPD filed a third party complaint against Owen Equipment and Erection Co., owners and operators of the crane. Id. at 367-68. The district court granted OPPD's motion for summary judgment. Id. at 368. Owen admitted in its answer that it was a Nebraska corporation. Id. at 369. However, it was later disclosed that Owen's principal place of business was Iowa, not Nebraska. Owen then moved to dismiss the complaint for lack of jurisdiction. Both the district court and the court of appeals denied Owen's motion to dismiss. The Supreme Court reversed. Id. at 377.
41. Id. at 373-76.
42. See Ayala v. United States, 550 F.2d 1196, 1200, 1200 n.8 (9th Cir. 1977) (reaffirming rejection of pendent party jurisdiction doctrine after Aldinger).
43. See Weinberger v. Kendrich, 698 F.2d 61 (2d Cir. 1982). "The exclusivity of federal jurisdiction over claims of violations of the Securities Exchange Act makes a federal court the only one where a complete disposition of federal and related state claims can be rendered." Id. at 76.
applied the doctrine only when the federal statute granted the federal courts exclusive jurisdiction. Other circuit courts were less restrictive in their acceptance of pendent party jurisdiction. The Seventh,\(^45\) Eighth,\(^46\) and District of Columbia\(^47\) Circuit Courts of Appeals applied pendent party jurisdiction as long as its application did not result in an elimination of diversity when diversity was the jurisdictional basis for the federal claim.

C. Finley v. United States

In 1989, the Supreme Court attempted to resolve the split among the circuits by further refining and restricting the use of pendent party jurisdiction. In *Finley v. United States*,\(^48\) the plaintiff’s husband and two children were killed when their plane crashed into power lines near a San Diego airport. The plaintiff originally sued the city of San Diego, alleging that the city negligently maintained and operated the airport’s runway lights. The plaintiff also brought an action against the San Diego Gas and Electric Company alleging negligent placement of the power lines.\(^49\) The plaintiff later learned that the Federal Aviation Administration (FAA) was actually responsible for maintaining the runway lights.\(^50\)

The plaintiff filed suit against the FAA in federal district court under the Federal Tort Claims Act (FTCA) alleging negligence by the FAA.\(^51\) The plaintiff later moved to amend her federal complaint to include the claims against the original defendants. No independent basis for federal jurisdiction existed between the plaintiff and the original defendants.\(^52\) The district court granted the plaintiff’s motion but certified an interlocutory appeal to the Ninth Circuit Court of Appeals on the issue of pendent party jurisdiction.\(^53\) The court of appeals reversed, finding that the FTCA did not permit pendent party jurisdiction where the main claim is a federal-question rather than diversity claim.\(^54\) Id. at 92 (citation omitted).

\(^45\) See Price v. Pierce, 823 F.2d 1114 (7th Cir. 1987). “[W]e recognize ‘pendent party’ jurisdiction where the main claim is a federal-question rather than diversity claim.” Id. at 1119 (citing Moore v. Marketplace Restaurant, Inc., 754 F.2d 1336, 1360-61 (7th Cir. 1985) (approving pendent party jurisdiction in section 1983 case)).

\(^46\) See North Dakota v. Merchants Nat’l Bank & Trust Co., 634 F.2d 368, 370-74 (8th Cir. 1980) (following Aldinger).


\(^48\) 490 U.S. 545 (1989).

\(^49\) Id. at 546.

\(^50\) Id.

\(^51\) Id. at 546-47.

\(^52\) Id. Both the plaintiff and the original state court defendants were residents of California and thus were non-diverse parties. This eliminated any independent basis for federal jurisdiction. Id. at 547.

\(^53\) Id. at 546-47. The interlocutory appeal was certified pursuant to 28 U.S.C.
party jurisdiction. The Supreme Court granted certiorari and affirmed, holding that pendent party jurisdiction was unavailable under the FTCA.

Writing for the majority, Justice Scalia began the analysis by citing two prerequisites for creating jurisdiction: "The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it." The Court relied on United Mine Workers v. Gibbs and the constitutional requirements for pendent jurisdiction. The Court assumed, without deciding, that the constitutional criteria for pendent party and pendent claim jurisdiction were the same. The Court conceded that the plaintiff's claims met the constitutional criteria necessary for pendent claim jurisdiction. The majority, however, went on to state that "with respect to the addition of

§ 1292(b) (1988). Finley, 490 U.S. at 547. Section 1292(b) addresses the jurisdiction of federal appellate courts to hear interlocutory appeals:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

28 U.S.C § 1292(b) (emphasis in original).

54. Finley, 490 U.S. at 547. The Ninth Circuit Court of Appeals relied on its holding in Ayala v. United States, 550 F.2d 1196 (9th Cir. 1977), which held that the FTCA expressly rejected pendent party jurisdiction. Finley, 490 U.S. at 547.

55. Finley, 490 U.S. at 556. The FTCA grants to the federal district courts jurisdiction over "civil actions on claims against the United States ... caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment . . . ." 28 U.S.C. § 1346(b) (1988).

56. Finley, 490 U.S. at 548 (quoting Mayor v. Cooper, 73 U.S. (6 Wall.) 247, 252 (1868)) (emphasis added).

57. 383 U.S. 715 (1966). Not surprisingly, the Court in Finley omitted language from Gibbs which appeared to invite federal court assertion of pendent party jurisdiction:

The State and federal claims must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole.

Id. at 725 (emphasis in original). The Court in Gibbs also stated:

While it is commonplace that the Federal Rules of Civil Procedure do not expand the jurisdiction of the federal courts, they do embody "the whole tendency of our decisions . . . to require a plaintiff to try his . . . whole case at one time," and to that extent emphasize the basis of pendent jurisdiction.

Id. at 725 n.13 (citations omitted).

58. Finley, 490 U.S. at 548-49.

59. Id. at 549.
different parties, as opposed to different claims, we will not assume that the full constitutional power has been congressionally authorized, and will not read jurisdictional statutes broadly."

The Court then examined the language of the FTCA and held that it precluded jurisdiction over defendants other than the United States. While the issues in Finley were limited to FTCA's jurisdictional grant, the majority's language implied a broader rule. Justice Scalia concluded with an "interpretive rule," stating, "a grant of jurisdiction over additional claims involving particular parties does not itself confer jurisdiction over additional claims by or against different parties." The analysis adopted by the Court in Finley was inconsistent with that used in Aldinger and Owen. Under the earlier analysis, federal courts could exercise pendent party jurisdiction unless the pertinent jurisdictional grant indicated a congressional intent to negate pendent jurisdiction. In contrast, the analysis in Finley suggested that pendent party jurisdiction under a particular statute existed only where Congress intended to grant such jurisdiction. This decision unquestionably limited the use of pendent party jurisdiction.

It remained to be seen whether the lower courts would interpret Finley merely as a further restriction on pendent party jurisdiction or as an effective elimination of the doctrine. In Lockard v. Missouri Pacific Railroad, the court of appeals' interpretation of Finley may have sounded the death knell for pendent party jurisdiction in the Eighth Circuit. It was only through an act of Congress that the doctrine was revived in the Eighth Circuit.

D. Pendent Party Jurisdiction in the Eighth Circuit Prior to Finley

Prior to Finley, the Eighth Circuit Court of Appeals had recognized the power of federal courts to exercise jurisdiction over pendent par-

60. Id. at 549-50. The Court cited three cases in which pendent party jurisdiction was denied: Zahn v. International Paper Co., 414 U.S. 291, 300-01 (1973) (refusing to allow a plaintiff seeking diversity action with less than $10,000 to append claims to other jurisdictionally sufficient claims of plaintiff class); Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 372 (1978) (discussed supra text accompanying notes 38-41); Aldinger v. Howard, 427 U.S. 1 (1976) (discussed supra text accompanying notes 31-37). Finley, 490 U.S. at 549-50.

61. Finley, 490 U.S. at 552-54. See supra note 55 and accompanying text (jurisdictional language of the FTCA). The majority concluded that "'against the United States' means against the United States and no one else." Finley, 490 U.S. at 552.

62. Finley, 490 U.S. at 556.

63. See, e.g., Aldinger, 427 U.S. 1 (1976). "Before it can be concluded that such jurisdiction exists, a federal court must satisfy itself not only that Art. III permits it, but that Congress in the statutes conferring jurisdiction has not expressly or by implication negated its existence." Id. at 18.

64. 894 F.2d 299 (8th Cir.), cert. denied, 111 S. Ct. 134 (1990).
ties. In *North Dakota v. Merchants National Bank & Trust Co.*, decided in 1980, the Eighth Circuit approved the application of pendent party jurisdiction. In *Merchants*, the underlying dispute arose when the Comptroller of the Currency, under section thirty of the National Bank Act, granted the defendant banks permission to change their names to "First Bank of North Dakota" of the city or town where the bank was located. The state, which operated its central financial institution under the name, "Bank of North Dakota," objected to the name change.

The state sued the Comptroller and the defendant banks in federal court seeking review of the Comptroller's decision and an injunction preventing the banks from changing their names. The district court upheld the Comptroller's decision. The state appealed the district court's decision to dismiss the state's unfair competition claims against five defendant banks. The state argued that it had pleaded a claim of state common law unfair competition and that the district court had ignored the pendent claim. The court of appeals remanded the case for further proceedings on that claim. Upon remand, the district court held that the National Bank Act preempted the state's unfair competition claim and dismissed the suit.

The state again appealed. Although not raised as an issue by either party, the Eighth Circuit began its analysis by questioning the district court's jurisdiction to hear the state law claims against the defendant banks. The court ultimately analyzed the issue as one of pendent party jurisdiction rather than pendent claim jurisdiction. The court distinguished the jurisdictional statute underlying the

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65. 634 F.2d 368 (8th Cir. 1980).
68. *Id.* at 370.
69. *Id.*

The court stated:

The difficulty with finding pendent jurisdiction in the present case stems less from the nature of the claims themselves than from the fact that the two claims involved different defendants. If the difference in defendants is for the moment disregarded, it is clear that the case satisfied the constitutional requirements of pendent jurisdiction as set out in *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S. Ct. 1130, 16 L. Ed. 2d 218 (1966). First, the claim arising under federal law was jurisdictionally "substantial." Second, the federal and state claims had a "common nucleus of operative fact" in the defendant banks' adoption of new names and the Comptroller's approval thereof. And third, plaintiff would ordinarily be expected to try both claims in one proceeding because a single interest of plaintiff's was affected.

*Id.* (footnote omitted). The court then acknowledged that the claims met the requirements of *Gibbs* but added, "Remaining is the question whether pendent jurisdiction of the unfair competition claim existed despite the fact that the defendants to that claim, the appellee banks, were not parties to the claim for review of the Comptroller's decision, upon which federal jurisdiction was based." *Id.* at 371.
state's federal claim, 28 U.S.C. § 1331(a), from the jurisdictional statute behind 42 U.S.C. § 1983, which the Supreme Court addressed in Aldinger. The court noted that the "Supreme Court has not yet indicated whether pendent party jurisdiction may be exercised when primary jurisdiction is founded on 28 U.S.C. § 1331(a)." Although section 1331(a) did not contain an exclusive jurisdictional grant, the court was "convinced that pendent party jurisdiction was not barred in this case."

Thus, prior to Finley, the doctrine of pendent party jurisdiction was alive and well in the Eighth Circuit. Despite Finley, other circuit courts of appeals also kept the doctrine of pendent party jurisdiction alive. However, the court's decision in Lochard temporarily left in doubt the survival of pendent party jurisdiction in the Eighth Circuit.

II. LOCKARD v. MISSOURI PACIFIC RAILROAD

A. Statement of the Case

Writing for the majority in Lockard, Chief Judge Lay began by asserting that Finley would control the court's analysis. The majority held that under Finley "pendent party jurisdiction exists only where Congress affirmatively granted such jurisdiction." Once the
majority adopted this interpretation of *Finley*, the rest of its analysis was academic.

This result required the court to read into *Finley* a nearly complete proscription of pendent party jurisdiction, an unnecessarily restrictive interpretation. The majority in *Lockard* chose to rely on dicta from *Finley* to form the court's interpretive rule. Other commentators had interpreted *Finley* as requiring that a statute affirmatively grant pendent party jurisdiction. Thus, criticism of *Lockard* might be interpreted as merely blaming the messenger. However, because the *Finley* Court never explicitly mentioned an "affirmative grant" requirement in its holding, there was no need for the Eighth Circuit to read an "affirmative grant" requirement into *Finley*. In fact, the Court stated in *Finley* the limitations of its decision when reiterating its purpose for granting certiorari: "We granted certiorari . . . to resolve a split among the circuits on whether the FTCA permits an assertion of pendent jurisdiction over additional parties." Thus the Eighth Circuit could have interpreted *Finley* as applying solely to the FTCA, while remaining faithful to the Court's decision.

The plaintiffs in *Lockard* argued that the jurisdictional grant of the FELA was broader than the jurisdictional grant of the FTCA, and that *Finley* should not apply. Not surprisingly, the court of appeals disagreed. The majority compared the FELA's jurisdictional language with that of the FTCA and found the language under the FELA no less restrictive than that of the FTCA. The majority ar-

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If *Aldinger v. Howard* . . . required us to ask whether the Federal Tort Claims Act embraced "an affirmative grant of pendent-party jurisdiction," . . . I would agree with the majority that no such specific grant of jurisdiction is present. But, in my view, that is not the appropriate question under *Aldinger*. I read the Court's opinion in that case, rather, as requiring us to consider whether Congress has demonstrated an intent to exempt "the party as to whom jurisdiction pendent to the principal claim" is asserted from being haled into federal court.

*Id.* at 302 n.7 (quoting *Finley*, 490 U.S. at 566-67 (Blackmun, J., dissenting)) (emphasis in original). Thus, the Eighth Circuit's holding that pendent party jurisdiction does not exist without an affirmative grant from Congress is based on dicta in *Finley* and drawn from the *Finley* dissent's characterization of *Finley*.


It was possible to read *Finley* as only a construction of the Federal Tort Claims Act. . . . It seemed clear, however, that this reading of *Finley* was too narrow. A fairer reading was that the Court was distinguishing sharply between pendent claims and pendent parties. Although the *Finley* Court assumed, without deciding, that pendent party jurisdiction would be within the constitutional grant of judicial power, it held that "an affirmative grant of pendent-party jurisdiction" must be found in a statute.

*Id.* Another commentator summed up *Finley* this way: "In effect, the *Finley* Court declared Gibbs brain dead, but refused to discontinue life support." *Perdue, Finley v. United States: Unstringing Pendent Jurisdiction*, 76 Va. L. Rev. 539, 568 (1990).

78. *Finley*, 490 U.S. at 547.

79. The Court stated:
gued that a stronger argument actually existed for granting pendent party jurisdiction under the FTCA than under the FELA. The court noted that FELA plaintiffs could bring suits in either state or federal court and that defendant railroads were prohibited from removing such an action brought in state court. As a result, a plaintiff suing under the FELA could avoid a bifurcated trial by bringing the entire action in state court.

In contrast, plaintiffs under the FTCA are prohibited from bringing suits against the federal government in state court. The majority reasoned that denying pendent party jurisdiction to claimants under the FELA was less harsh than the *Finley* holding, since the FELA plaintiffs who wished to sue a defendant railroad and pendent parties could do so in state court.

In his dissent, Judge Beam disagreed with the majority's analysis of *Finley* and its denial of pendent party jurisdiction for claims brought under the FELA. Judge Beam argued that the jurisdictional language in the FELA is broader than that in the FTCA. Beam noted that the FELA's language "discusses liability resulting from the negligence of parties other than the railroad." Beam cited a number of district court cases which allowed pendent party jurisdiction under the FELA. Beam concluded that since *Finley* did not expressly eliminate pendent party jurisdiction, and since Congress provided non-exclusive jurisdiction over FELA claims, pendent

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We see no relevant difference in the two provisions, however. As we have noted, the FTCA confers jurisdiction over "civil actions on claims against the United States." By comparison, the FELA provides that "[e]very common carrier by railroad ... shall be liable ..." and, further, that "under this chapter an action may be brought in a district court of the United States ..." It is clear from this language that the FELA accomplishes in two steps what the FTCA accomplishes in one: a grant of jurisdiction over claims involving particular parties, in this case FELA claims against railroads.

*Lockard*, 894 F.2d at 302 (emphasis and alterations in original).
80. *Id.* at 303 (citing 45 U.S.C. § 56 (1988)).
81. Under 28 U.S.C. § 1445(a) (1982), railroads are prohibited from removing an action from a state court to any federal district court.
82. *See supra* note 55 (text of jurisdictional grant under the FTCA).
83. *Lockard*, 894 F.2d at 305-08 (Beam, J., dissenting in part).
84. *Id.* at 307.
85. *Id.* Judge Beam quoted the following language of the FELA:
   Every common carrier by railroad while engaging in commerce between any of the several States or Territories ... shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, ... resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.
   *Id.* at 307 (quoting 45 U.S.C. § 51).
86. *Id.* Judge Beam cited several cases finding pendent party jurisdiction proper in FELA cases. Congress did not explicitly or implicitly negate an exercise of jurisdiction over non-federal claims in FELA cases. *Id.*
party jurisdiction was proper in *Lockard*.87

### B. Analysis

#### 1. The Eighth Circuit

The *Lockard* majority's rule requiring an "affirmative grant" from Congress had the effect of all but eliminating pendent party jurisdiction in the Eighth Circuit because few, if any, federal statutes contain such a grant. The majority's holding appears to conflict with the ultimate goal of *Finley*, that "Congress be able to legislate against a backdrop of clear interpretive rules."88 Under the Eighth Circuit's analysis, if Congress intended a particular statute to confer jurisdiction over pendent parties, Congress would have included language specifically providing for pendent party jurisdiction.89 This interpretive rule was not part of the backdrop against which Congress legislated. Few members of Congress would have guessed that omitting an "affirmative grant" from a statute would prevent citizens from filing actions which are based on a combination of federal and state claims against all the parties in federal court.90

Why the majority chose such a restrictive interpretation of *Finley* is unclear. Certainly, the court had available other, less restrictive alternatives. The language of the FELA is significantly broader than

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87. *Id.* at 308.

88. *Finley*, 490 U.S. at 556. The Court in *Finley* stated the goal as follows: "What is of paramount importance is that Congress be able to legislate against a backdrop of clear interpretive rules, so that it may know the effect of the language it adopts." *Id.*

89. While the majority did not explain what statutory language would satisfy the "affirmative grant" requirement, more specificity than that contained in the grant under the FELA is apparently required. *See supra* note 80 (text of jurisdictional language contained in the FELA). Since the jurisdictional grant in the FELA was found overbroad by the court, it appears that only language approximating a specific acknowledgment and grant of pendent party jurisdiction will suffice. Moreover, as pointed out by Justice Blackmun in his dissent in *Finley*, if a statute specifically granted jurisdiction over pendent parties, then the doctrine of pendent party jurisdiction would be unnecessary.

And, as those of us in dissent in *Aldinger* observed, the *Aldinger* test would be rendered meaningless if the required intent could be found in the failure of the relevant jurisdictional statute to mention the type of party in question, "because all instances of asserted pendent-party jurisdiction will by definition involve a party as to whom Congress has impliedly 'addressed itself' by not expressly conferring subject-matter jurisdiction on the federal courts." *Finley*, 490 U.S. at 556-57 (Blackmun, J., dissenting) (quoting *Aldinger* v. Howard, 427 U.S. 1, 23 (1976) (Brennan, J., dissenting)).

90. Judge Beam argued that the majority's opinion conflicted with *Finley*. After citing several cases upholding pendent party jurisdiction under the FELA, he stated, "I would follow the Supreme Court's direction and adjudicate 'against a background of clear interpretive rules, so that [Congress] may know the effect of the language it adopts.'" *Lockard*, 894 F.2d at 308 (Beam, J., dissenting) (quoting *Finley*, 490 U.S. at 556).
that contained in the jurisdictional grant of the FTCA. Congress limited the FTCA’s jurisdiction to “civil actions on claims against the United States . . . .”91 In contrast, the FELA states simply that railroads “shall be liable in damages to any person suffering injury while he is employed by such carrier . . . .”92 The Eighth Circuit could have easily distinguished the jurisdictional language between the two statutes and upheld the district court’s judgment against the defendant in Lockard.

Even if the court found it impossible to uphold pendent party jurisdiction under the FELA, it should have limited its holding to actions brought pursuant to the FELA. The broad sweep of the majority’s “affirmative grant” rule effectively eliminated the assertion of pendent party jurisdiction under any statute.

2. Courts in Other Jurisdictions

Several courts in other jurisdictions have addressed the pendent party issue in light of Finley and have reached different results. The Second Circuit Court of Appeals adopted a more faithful interpretation of Finley in Roco Carriers, Ltd. v. M/V Nurnberg Express.93 There, the Second Circuit held that Finley permitted pendent party jurisdiction “only if the statute providing federal jurisdiction over the pri-

92. 45 U.S.C. § 51 (1988). While Lockard might have been based in part on a disdain by the court for personal injury suits brought under the FELA, there is no evidence of this. If the court did harbor antagonistic feelings toward the FELA, however, they would not be alone.

[I]t is difficult to earmark cases to be removed from the federal docket, because there is no broad consensus on the role of federal courts. There are, however, some federal claims which seem obviously inappropriate. Among these are personal injury suits by railway employees under the Federal Employers Liability Act and by seamen under the Jones Act.

1. FEDERAL COURT STUDY COMMITTEE, WORKING PAPERS AND SUBCOMMITTEE REPORTS 376 (July 1, 1990) [hereinafter Working Papers].
93. 899 F.2d 1292 (2d Cir. 1990). In Roco, the court held that pendent party jurisdiction was available under 28 U.S.C. § 1333(1), which confers admiralty jurisdiction on the federal courts. Id. at 1293. The court distinguished the jurisdictional language contained in 28 U.S.C. § 1333(1) from the FTCA’s jurisdictional grant examined in Finley. The court noted that 28 U.S.C. § 1333(1) conferred exclusive jurisdiction over “[a]ny civil case of admiralty or maritime jurisdiction.” Id. at 1296 (quoting 28 U.S.C. § 1333(1)). The court found this language significantly broader than the grant for the FTCA, which limited jurisdiction to claims against the United States. Id. at 1296. The Second Circuit also distinguished Roco from Lockard, stating that the Eighth Circuit’s holding in Lockard “rested on the language of the FELA, which imposes liability on ‘[e]very common carrier by railroad’ for injuries sustained by railroad employees.” Id. at 1296 (quoting 45 U.S.C. § 51). This quote omitted the rest of the jurisdictional language contained in 45 U.S.C. § 51. The full text quoted by Judge Beam in his dissent in Lockard reveals a broader jurisdictional grant than is credited to the FELA by either the Roco or Lockard majorities. For a complete version of the pertinent language of 45 U.S.C. § 51, see supra note 85.
mary claim can also be interpreted as specifically conferring jurisdiction over other claims against additional parties."94 This interpretation acknowledged the restrictions placed on pendent party jurisdiction by Finley. However, in contrast to the Eighth Circuit's rule, the Second Circuit's interpretation granted district courts some discretion in deciding whether a particular jurisdictional grant could be construed as conferring pendent party jurisdiction.

The Ninth Circuit Court of Appeals had an opportunity to interpret Finley in Teledyne, Inc. v. Kone Corp.95 In Teledyne, the court read Finley as requiring courts considering pendent party jurisdiction to examine closely the statutory language and congressional intent of the respective jurisdictional grant.96 The court acknowledged that under Finley, jurisdictional statutes must be read narrowly.97 In spite of this restriction, the court found that the jurisdictional grant behind the Foreign Services Immunities Act (FSIA)98 provided for pendent party jurisdiction. The court conceded that the FSIA could be interpreted, "as in Finley," as limited to actions brought against a foreign state " 'and no one else.' "99 The court found that "unlike the FTCA, the FSIA extends federal jurisdiction over 'any civil action,' " and that this language excluded the "unspoken qualification read into the statute in Finley."100

The United States District Court for the Southern District of New York recently viewed Finley as requiring a three-tiered analysis:

[A] court analyzing a pendent party situation must consider: (1) whether the claims satisfy the Gibbs "common nucleus" test; (2) whether the statute conferring federal jurisdiction for the primary claim "expressly or by implication" prevents the exercise of jurisdiction over the pendent claim; and (3) whether the considerations of judicial economy, convenience, and fairness to the litigants favor having the court decide all of the claims together.101

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94. Roco, 899 F.2d at 1295 (citing Finley, 490 U.S. at 552-55).
95. 892 F.2d 1404 (9th Cir. 1990).
96. Id. at 1408.
97. Id. at 1409. The Teledyne court compared the jurisdictional language behind the Foreign Services Immunities Act (FSIA) with that of the FTCA, examined in Finley, and concluded that the jurisdictional grant underlying the FSIA was significantly broader. Id.
98. The FSIA provides in pertinent part: "The district courts shall have original jurisdiction . . . of any nonjury civil action against a foreign state . . . ." 28 U.S.C. § 1330(a) (1988).
99. Teledyne, 892 F.2d at 1409 (quoting Finley, 490 U.S. at 552). The court found the FSIA language " 'any civil action' against a foreign state" to be a broader grant of jurisdiction than that contained in the FTCA. Id.
100. Id. (quoting 28 U.S.C. § 1330(a) (1988) (emphasis in original)).
The court made no mention of a requirement of an affirmative grant of jurisdiction. Applying this test, the court concluded that pendent party jurisdiction was permissible under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).¹⁰²

3. Potential Ramifications of Lockard

The effect of the Eighth Circuit Court of Appeals' decision in Lockard on some litigants within the Eighth Circuit would have been devastating had Congress failed to act to restore pendent party jurisdiction. For certain individuals, the absence of pendent party jurisdiction placed a serious impediment to complete adjudication of their claims. One group of litigants who would have suffered disproportionately were plaintiffs who brought actions under 42 U.S.C. § 1983.¹⁰³ Claimants who seek relief under section 1983 rarely have the financial resources to litigate claims arising from the same incident in both state and federal court. Yet the Supreme Court in Finley acknowledged that the absence of pendent party jurisdiction might lead to just such bifurcated trials.¹⁰⁴

Unlike the jurisdiction under the FTCA, federal jurisdiction for section 1983 claims is non-exclusive.¹⁰⁵ Thus, one could argue that section 1983 plaintiffs seeking to avoid bifurcated proceedings could bring their entire section 1983 claim in state court. However, this

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¹⁰². A & N Cleaners, 747 F. Supp. at 1018-20. CERCLA's jurisdictional grant provides for exclusive jurisdiction "over all controversies arising under this chapter, without regard to the citizenship of the parties or the amount in controversy." 42 U.S.C. § 9613(b) (1988).

¹⁰³. 42 U.S.C. § 1983 (1988). The statute, which provides civil remedies for civil rights plaintiffs, reads as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Id.

¹⁰⁴. Finley, 490 U.S. at 555.


> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

Id.
analysis ignores a fundamental goal behind the enactment of section 1983, namely "to afford a federal right in federal courts." Without pendent party jurisdiction, many section 1983 claimants may be left with an unenviable choice. They might file section 1983 claims in federal court and jurisdictionally insufficient claims against pendent parties in state court, or they might choose to litigate the entire action in state court.

Both of these choices have disadvantages. Bifurcating an action between federal and state courts burdens the plaintiff with the expense of two separate actions. The disadvantages associated with litigating the entire claim in state court are not quite so obvious but are potentially more serious. Plaintiffs often bring actions against state officials under section 1983, where the defendants may be high profile state officials who have significant influence on their state’s judicial system. An action against such defendants in state court might decrease the probability of prevailing on the merits. In spite of this, the prohibitive cost of two separate trials may force a plaintiff to choose a single, but potentially biased, trial in state court. Moreover, as with cases arising under the FELA, state court judges are rarely familiar with the special rules and case law associated with section 1983 cases. Thus, a plaintiff who pursues a section 1983 claim in state court would likely lose the expertise and experience possessed by federal judges in section 1983 actions.

After the Supreme Court’s decision in Finley, several courts addressed the issue of pendent party jurisdiction with respect to section 1983 claims. The results thus far have been mixed. With respect to pendent party jurisdiction under section 1983, one court found that “[t]here does not appear to be any statutory obstacle to granting jurisdiction.” Other courts have resisted asserting pendent party jurisdiction in actions brought under section 1983.

106. Monroe v. Pape, 365 U.S. 167, 180 (1961). See Moore v. Marketplace Restaurant, Inc., 754 F.2d 1336, 1361 (7th Cir. 1985). In Moore, Judge Posner applied this ideal to the issue of pendent jurisdiction, stating: “Access to a federal forum was intended to be a right of section 1983 plaintiffs, and would be impeded by preventing the joinder of a closely related claim against private defendants in federal court under the pendent parties concept.” Id.

107. Figueroa v. Molina, 725 F. Supp. 651, 655 (D.P.R. 1989). Commenting on section 1983, the court noted that “although its ambit is restricted to violations of the federal constitution, its aim is advanced by allowing federal courts to provide remedies for injuries that, although derived from other law, share a common nucleus of operative fact with section 1983 claims.” Id. (quoting Rodriguez v. Comas, 888 F.2d 899 (1st Cir. 1989)).

108. See Stallworth v. City of Cleveland, 893 F.2d 830 (6th Cir. 1990). In Stallworth, the court did not extend pendent party jurisdiction to the plaintiff’s loss of consortium claim because the loss did not “represent an injury based on a deprivation of his rights, privileges or immunities.” Id. at 838. See also Reid v. City of New York, 736 F. Supp. 21 (E.D.N.Y. 1990). In Reid, the court stated that by merely estab-
These divergent views stem from the fact that Finley does not answer the question of whether pendent party jurisdiction can be asserted under section 1983.

The Eighth Circuit has not addressed whether assertion of pendent party jurisdiction is proper when the underlying federal claim is based on section 1983. However, prior to Finley, the Eighth Circuit allowed its district courts to assert pendent jurisdiction liberally in section 1983 cases. In Murray v. Wal-Mart, Inc., a case decided only eleven days before Finley, the Eighth Circuit affirmed a district court exercise of jurisdiction over a pendent state claim in a section 1983 case.

In Murray, the plaintiff filed section 1983 claims against Wal-Mart and city officials who detained and subsequently prosecuted her for shoplifting. There was some question as to whether Wal-Mart officials acted under "color of state law," a prerequisite for bringing action under section 1983. Even if no cognizable section 1983 claim existed against Wal-Mart, the district court asserted jurisdiction over Wal-Mart by joining the state claims against Wal-Mart with the federal claims against the city via the doctrine of pendent jurisdiction. The district court exercised its jurisdiction over the state claims against Wal-Mart even though the city settled and had been dismissed from the suit. Arguably, if the section 1983 claims were not cognizable against Wal-Mart, then Wal-Mart would be a pendent party. Ultimately, however, the court analyzed the case as a pendent claims case rather than a pendent parties case.

The Eighth Circuit Court of Appeals approved of the district court's exercise of pendent jurisdiction over Wal-Mart. However, the court went on to find that Wal-Mart officials had acted under color of state law, thus rendering the issue of pendent jurisdiction moot. While this decision failed to endorse explicitly the assertion of pendent party jurisdiction in a section 1983 case, it shows an inclination to allow such jurisdiction in a section 1983 case.

A strong argument exists that the language used in the jurisdictional grant of section 1983 met the criteria established in Finley.

lishing liability against one "'person' who 'subjects, or causes to be subjected, any citizen to the 'deprivation of rights, privileges, or immunities secured by federal law . . . do[es] not affirmatively grant pendent-party jurisdiction over the City, which is not liable for such deprivation." Id. at 27 (quoting 42 U.S.C. § 1983 and 28 U.S.C. § 1343(a)(3)).
110. Id. at 557-58.
111. Id.
112. Id. at 558.
113. Id. The court also stated that "even if no cognizable section 1983 action existed, the district court could still retain jurisdiction over the pendent state claims against Wal-Mart." Id.
The jurisdictional language for section 1983 is much broader than the limited jurisdictional grant under the FTCA.114 After Lockard, however, attempts to seek pendent party jurisdiction in section 1983 actions in the Eighth Circuit became an exercise in futility. While an argument could be made that Finley permitted pendent party jurisdiction in section 1983 actions, such an argument failed in the Eighth Circuit because of the "affirmative grant" rule of Lockard.115 Thus, Congress' statutory authorization of pendent party jurisdiction is particularly important to plaintiffs who seek relief in the federal courts of the Eighth Circuit.

Although the Eighth Circuit's interpretation of Finley was unnecessarily restrictive, Finley's limitation on pendent party jurisdiction could not be completely circumvented by the courts. Perhaps the circuit courts could have maintained the doctrine for a little longer, but only Congress possessed the power to require the courts to allow pendant party jurisdiction.

III. CONGRESSIONAL ACTION

A. The Federal Courts Study Committee

In 1988, Congress established the Federal Courts Study Committee (Committee).116 Chief Justice Rehnquist appointed the Committee members as required by the statute.117 The purpose of the

114. Compare supra note 106 (jurisdictional grant for section 1983) with supra note 55 (jurisdictional language of the FTCA).

115. In spite of the broad language of § 1343(a), the "affirmative grant" required by Lockard is obviously lacking. See supra note 105 (text of § 1343(a)).


117. Id. § 103(a). The Study Act provides:

[The membership of the Committee shall be selected in such a manner as to be representative of the various interests, needs and concerns which may be affected by the jurisdiction of the Federal courts. The Chief Justice shall designate one of the members of the Committee to serve as Chairman.]

Id. § 103(b).

The Committee consisted of Joseph F. Weis Jr., Chairman (senior judge for the Third Circuit Court of Appeals); J. Vincent Aprile II, Esq. (General Counsel of the Kentucky State Department of Public Advocacy); Jose A. Cabranes (judge for the United States District Court for the District of Connecticut); Keith M. Callow (Chief Justice of the Supreme Court of Washington); Levin H. Campbell (Judge for the First Circuit Court of Appeals); Edwin S. G. Dennis, Jr. (Assistant Attorney General for the Criminal Division of the United States Department of Justice); Charles E. Grassley (United States Senator from Iowa and Member of the Senate Judiciary Committee, Ranking Minority Member of the Subcommittee on Courts and Administrative Practice); Morris Harrell (law partner, Locke Purnell Rain Harrell from Texas and President of the American Bar Association in 1982-83); Howell T. Heflin (United States Senator from Alabama, member of the Senate Judiciary Committee and chairman of the Subcommittee on Courts and Administrative Practice); Robert W. Kastenmeier
Committee was threefold: to examine the problems and issues facing the federal courts, to develop a long-range plan for the federal judiciary, and to make advisory recommendations for statutory revisions affecting the federal courts.\textsuperscript{118} Congress required the Committee to complete its study and publish its report within fifteen months from January 1, 1989.\textsuperscript{119} The Committee conducted an exhaustive study and called on the expertise of numerous advisors and consultants.\textsuperscript{120} The Committee released its draft, Tentative Recommendations For Public Comment, on December 22, 1989,\textsuperscript{121} and its final report on April 2, 1990.\textsuperscript{122} Included in the report’s myriad of reforms was its recommendation for congressional authorization of pendent party jurisdiction.\textsuperscript{123}

The United States Supreme Court’s decision in \textit{Finley} provided the basis for this recommendation.\textsuperscript{124} The Committee noted in its draft that \textit{Finley} limited the power of the federal courts to exercise pendent party jurisdiction. The draft was critical of \textit{Finley} and showed obvious concern for its possible ramifications. While the Committee acknowledged that federal court docket control constituted a worthy goal, the Committee stated that eliminating pendent party jurisdiction was an “undesirable” method for achieving that goal.\textsuperscript{125}

\textbf{B. Reasons for Change}

Congress’ decision to adjust the requirements for federal jurisdic-

\textsuperscript{118} Study Act, supra note 116, § 102(b).
\textsuperscript{119} \textit{Id.} §§ 105(1), 109.
\textsuperscript{120} \textit{See} \textit{Final Report, supra} note 117, at 199-201.
\textsuperscript{121} \textit{Federal Courts Study Committee, Tentative Recommendations for Public Comment} (Dec. 22, 1989) [hereinafter \textit{Draft}].
\textsuperscript{122} \textit{Final Report, supra} note 117.
\textsuperscript{123} \textit{Id.} at 47-48. Three members dissented from this recommendation: Judge Levin Campbell, Morris Harrell, and Diana Gribbon Motz. \textit{Id.}
\textsuperscript{124} \textit{Draft, supra} note 121, at 69. “Last Term, in \textit{Finley v. United States}, the Supreme Court limited the federal courts’ power to hear pendent party claims.” \textit{Id.}
\textsuperscript{125} \textit{Id.} In light of the Eighth Circuit’s interpretation of \textit{Finley}, perhaps the Committee’s characterization of \textit{Finley}’s effect on pendent party jurisdiction was too cautious.
tion stemmed in large part from a concern over the explosive growth in the caseload of the federal courts. The increased caseload was primarily the result of a dramatic rise in district court civil filings. For instance, in 1960 there were 51,063 civil filings in federal district courts compared with 239,634 in 1988, an increase of over 400%.126 While the number of federal judgeships has increased, it has failed to keep up with the increased caseload. The number of federal district court judgeships jumped from 248 in 1960 to 575 in 1988, while the average number of filings per judgeship grew from 206 in 1960 to 416 in 1988.127

Perhaps even more ominous than the increase in the district court caseload was the increase in the docket of the courts of appeals. However, this growth stems from different factors than does the growth of the district court caseload. While criminal cases did not contribute to the caseload growth in district courts,128 criminal cases accounted for much of the growth in the docket of the courts of appeals. In 1988, of 37,524 filings with the courts of appeal, 15,463 were criminal cases.129 By contrast, in 1960 there were only 913 criminal cases out of a total of 3,765 circuit court filings.130

The Committee's overall mandate to recommend ways to reduce federal court congestion, delay, and expense131 was open to two different approaches: docket reduction and judicial efficiency. Most of the Committee's recommendations focused on ways to reduce the caseload of both the district and appellate court systems. The Committee estimated that if its recommendations had been implemented in 1988, docket reduction would have been 37.2% in the district courts and 16.6% in the courts of appeals.132 With such an emphasis on docket reduction, the Committee's decision to recommend codification of the doctrine of pendent party jurisdiction appears to run counter to the Committee's goal.133

But while the Committee's overall goal may have been to reduce congestion, delay, and expense,134 this was impossible to do without

127. Id.
128. Id. at 29. The figures for criminal and civil filings actually show a decline in the number of new criminal cases filed per district judge. However, "this decrease is more than compensated for by the large increase in civil case filings." Id.
129. Id. at 30. This figure includes post-conviction cases. Id.
130. Id. Criminal cases now account for 40% of the docket of the courts of appeals. Id.
132. Id. at 27-28.
133. The Committee noted that "[a]bolishing supplemental jurisdiction will force litigants to bring a wide variety of federal claims into state courts . . . ." Working Papers, supra note 92, at 557. Presumably, forcing litigants into state courts would reduce the federal docket.
improvements in judicial efficiency. The elimination of pendent party jurisdiction could lead to many duplicitous trials in state and federal courts. Justice Scalia recognized this potential loss of efficiency in *Finley* when the Court eliminated pendent party jurisdiction in cases brought under the FTCA. Therefore, the Committee’s decision to recommend that Congress modify *Finley* by codifying pendent party jurisdiction was consistent with the Committee’s goal to promote judicial efficiency.

The Committee’s final recommendation regarding pendent party jurisdiction was simple: “Congress should expressly authorize federal courts to assert pendent jurisdiction over parties without an independent federal jurisdictional base.” The final report acknowledged that “[a]bolishing or radically curtailing pendent and ancillary jurisdiction would eliminate some cases [or] claims from the federal courts,” but the Committee recognized this would be “unwise” in light of the potential for judicial inefficiency and unfairness.

The Report identified the dilemmas faced by some litigants in federal courts as a result of the *Finley* restriction of pendent party jurisdiction. In light of these concerns, the Committee rejected the elimination of pendent party jurisdiction as a means to control the federal docket. Instead, the Committee recommended that “Congress . . . direct federal courts to dismiss state claims” in situations

135. Without pendent party jurisdiction, many litigants are forced to split their cases between state and federal courts. See WORKING PAPERS, supra note 92, at 558.
136. Justice Scalia wrote:

Because the FTCA permits the Government to be sued only in federal court, our holding that parties to related claims cannot necessarily be sued there means that the efficiency and convenience of a consolidated action will sometimes have to be forgone in favor of separate actions in state and federal courts.


137. FINAL REPORT, supra note 117, at 47. The Final Report’s recommendation regarding pendent party jurisdiction is nearly identical to that contained in the Draft. The Draft recommendation read: “Congress should authorize the federal courts to assert pendent jurisdiction over parties without an independent federal jurisdictional base but with claims related to the same ‘transaction or occurrence.’ ” DRAFT, supra note 121, at 69.

138. FINAL REPORT, supra note 117, at 47.

139. [A] litigant with related claims against two different parties—one within and one outside original federal jurisdiction—may have to choose between (1) splitting the claims and bringing duplicitous actions in state and federal courts; (2) abandoning one of the claims altogether; or (3) filing the entire case in state court, thus delegating the determination of federal issues to the state courts. The first alternative wastes judicial resources. The second is unfair to the claimant. The third forces litigants to bring a wide variety of federal claims into the state courts and in some cases is unavailable because federal jurisdiction over the federal aspect is exclusive.

*Id.*
where such claims predominate, where "they present novel or complex questions of state law," or where "dismissal is warranted in the particular case by considerations of fairness or economy."\textsuperscript{140}

C. Codification of Pendent Party Jurisdiction

Pendent party jurisdiction is now codified at 28 U.S.C. § 1367.\textsuperscript{141} In most cases, the effect of section 1367 is to limit a district court judge's discretion to deny pendent jurisdiction. This modifies prior case law which recognized pendent jurisdiction as "a doctrine of discretion, not of plaintiff's right."\textsuperscript{142}

1. Section 1367(a): Federal Question Jurisdiction

Congress removed much of the district courts' discretion to decline pendent (supplemental) jurisdiction in federal question cases with section 1367(a):

Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall involve the joinder or intervention of additional parties.\textsuperscript{143}

\textsuperscript{140.} Id. at 48. Interestingly, the Committee made no mention of limiting its recommendation concerning pendent party jurisdiction to non-diversity cases. This omission is easily explained. Earlier in the Report, the Committee recommended that federal jurisdiction based on diversity of parties be severely limited. "Congress should limit federal jurisdiction based on diversity of citizenship to complex multi-state litigation, interpleader, and suits involving aliens. At the least, it should effect changes to curtail the most obvious problems of the current jurisdiction." \textit{Id.} at 38. Therefore, since the Committee had earlier recommended near elimination of diversity jurisdiction, no need existed for the Committee to specifically limit its recommendation regarding pendent party jurisdiction to non-diversity cases.


\textsuperscript{143.} 28 U.S.C.A. § 1367(a). Read alone, section 1367(a) could be construed as merely granting district courts the power to exercise jurisdiction over pendent parties while giving them discretion to decline to do so. However, section 1367(c) lists the circumstances under which a court may decline to exercise pendent jurisdiction. Thus, if none of the circumstances in section 1367(c) exists and federal jurisdiction is not based on diversity, it appears that a district court must exercise jurisdiction over a pendent party. At least one court has noted that "[o]n its face, 28 U.S.C.A. § 1367(c) seems to indicate that a court should decline jurisdiction over a related state claim only in unusual circumstances. In the present case, however, I need not determine to what extent the statute may curtail the discretion afforded the courts under \textit{Gibbs}.”
In general, therefore, as long as the claims against the pendent party meet the constitutional requirements set out in Gibbs, district courts must exercise pendent jurisdiction unless a federal statute expressly provides otherwise, the pendent claim falls into one of the exceptions set out in section 1367(c), or federal jurisdiction is based on diversity.

To some extent, section 1367(a) removes a district court's discretion to decline pendent party jurisdiction in non-diversity cases. Thus, the section goes beyond the Committee's intent to restore the law as it existed prior to Finley, when district courts were prohibited from exercising pendent jurisdiction where Congress had expressly or implicitly negated such jurisdiction in a particular statute. Now, section 1367(a) prohibits district courts from exercising pendent jurisdiction only when the jurisdictionally sufficient claim is based on a statute which expressly prohibits the exercise of such jurisdiction.

2. Section 1367(b): Diversity Jurisdiction

Consistent with the Committee's recommendation to retain the "complete diversity" rule as articulated in Owen, section 1367(b) severely restricts the exercise of supplemental jurisdiction where federal jurisdiction is based solely on diversity of the parties:

In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

The Committee appeared to struggle with the concept of supplemental jurisdiction in diversity cases. On one hand, the restrictions on supplemental jurisdiction in diversity cases contradict the Com-

Rosen v. Chang, 758 F. Supp. 799, 803 n.6 (D.R.I. 1991). In contrast, other commentators suggest that the changes incorporated in section 1367 did little more than codify the law as it existed prior to Finley. See Mengler, Burbank & Rowe, supra note 24, at 214-25.

144. DRAFT, supra note 121, at 69; WORKING PAPERS, supra note 92, at 567.
146. WORKING PAPERS, supra note 92, at 567. In Owen, the Supreme Court based its refusal to allow the exercise of pendent jurisdiction over a third party defendant on an implicit requirement of complete diversity of parties found in section 1332. Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373-74 (1978).
mittee's general endorsement of supplemental jurisdiction. The Committee acknowledged that conformity with the complete diversity rule creates unfairness and additional costs in some cases. On the other hand, the Committee recognized that "despite its complications, the complete diversity rule serves important federal and federalist interests by limiting the scope of diversity jurisdiction." In accordance with these concerns, the Committee identified three alternatives available to Congress regarding the exercise of supplemental jurisdiction in diversity cases.

First, Congress could allow supplemental jurisdiction without a complete diversity limitation. This alternative would "provide an easy means to avoid the complete diversity rule." In light of the Committee's earlier recommendation to restrict radically diversity jurisdiction, it is not surprising that the Committee declined to support this alternative.

Second, Congress could instruct district courts to deny supplemental jurisdiction where the court finds that a plaintiff has filed a claim to circumvent the complete diversity rule. The Committee found this alternative undesirable because such a determination would usually be "impossible" for the court to make.

The third alternative, and the one recommended by the Committee, was designed to "codify the law as it existed prior to Finley." The Committee proposed that Congress require courts to deny supplemental jurisdiction in diversity actions over claims by a plaintiff against parties joined under Rules 14 and 19, or to claims by parties who intervene under Rule 24(b) of the Federal Rules of Civil Procedure. The Committee provided that courts could hear such claims, however, if necessary to prevent substantial prejudice.

Oddly, the Committee said nothing about supplemental claims

148. See Working Papers, supra note 92, at 547.
149. Id.
150. See supra note 140 (text of the Committee's recommendation to limit diversity jurisdiction).
151. See supra note 140 (text of the Committee's recommendation to limit diversity jurisdiction).
152. Working Papers, supra note 92, at 566-67. Section 1367(b) prohibits courts from exercising jurisdiction over pendent parties when "exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332." 28 U.S.C.A. § 1367(b). In other words, the "complete diversity" rule, highlighted in Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365 (1978), remains intact. See supra notes 39-41 and accompanying text for a more detailed look at the complete diversity rule.
154. Id.
156. Working Papers, supra note 92, at 567-68.
against parties joined under Rule 20. The Committee apparently did not intend to eliminate pendent party jurisdiction in diversity cases. Whether this was intentional or a mere oversight is irrelevant. Congress, in section 1367(b), included defendants joined under Rule 20 as parties over whom district courts may not exercise supplemental jurisdiction. Consequently, with respect to diversity actions, pendent party jurisdiction is subject to the same restrictions as ancillary jurisdiction.

3. Section 1367(c): Discretion not to Exercise Jurisdiction

In addition to those circumstances where federal question jurisdiction is expressly prohibited by federal law, section 1367(c) lists four circumstances in which a court "may decline to exercise supplemental jurisdiction":

1. the claim raises a novel or complex issue of State law,
2. the claim substantially predominate over the claim or claims over which the district court has original jurisdiction,
3. the district court has dismissed all claims over which it has original jurisdiction, or
4. in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

The determination as to whether a state claim presents a novel or complex issue of law is left to the discretion of the district court. Might a district court claim an issue is novel or complex regardless of the complexity of the state claim merely to rid itself of the pendent claim? According to the Committee's Working Papers, the answer appears to be no. The Committee noted that the Supreme Court in Gibbs cautioned district courts to avoid exercising pendent jurisdiction needlessly over difficult state law claims. Yet according to the

157. Fed. R. Civ. P. 20 (permissive joinder of parties), reads in pertinent part:

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All persons . . . may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.
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It was the permissive joinder of defendants which led to the issue of pendent party jurisdiction addressed in Finley and Lockard. See Finley v. United States, 490 U.S. 545, 546-47 (1989); Lockard v. Missouri Pac. R.R., 894 F.2d 299, 301 (8th Cir.), cert. denied, 111 S. Ct. 134 (1990).


159. Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well. Similarly, if it appears that the state issues substantially predominate, whether in terms of proof, of the scope of the issues raised, or of the comprehensiveness of the remedy sought, the state claims may be dismissed without prejudice and left for resolution to state tribunals.
Committee, district courts largely ignored this advice and often claimed jurisdiction over state claims "regardless of their complexity, novelty, or predominance in the litigation."\textsuperscript{160} Despite this tendency, some courts may attempt to use the "novel or complex" exception as an easy out to exercising pendent jurisdiction. Now, however, the burden is on the court choosing not to exercise pendent party jurisdiction to explain its decision and to identify the complex or novel state issues which it seeks to avoid.

The Committee's Report recommended that Congress direct federal district courts to "dismiss state claims if these claims predominate or if they present novel or complex questions of state law, or if dismissal is warranted in the particular case by considerations of fairness or economy."\textsuperscript{161} Congress did not direct courts to dismiss such state law claims, but merely granted district courts the discretion to dismiss such claims. Congress permitted district courts to decline pendent jurisdiction if all the claims which provide original jurisdiction are dismissed, or in exceptional circumstances when "there are other compelling reasons for declining jurisdiction."\textsuperscript{162}

Therefore, as long as the claims against the pendent party meet the constitutional requirements set out in United Mine Workers v. Gibbs,\textsuperscript{163} district courts must exercise jurisdiction over the pendent party unless federal jurisdiction is based on diversity or the pendent claim falls into one of the exceptions set out in section 1367(c). To what extent district courts will exercise pendent party jurisdiction re-

\textsuperscript{160} Id. at 561-62.

\textsuperscript{161} FINAL REPORT, supra note 117, at 48.

\textsuperscript{162} 28 U.S.C.A. § 1367(c). Section 1367 arguably improves the position of a plaintiff whose pendent claim is dismissed by a federal court. Section 1367(d) tolls the applicable statute of limitations for any timely-filed supplemental claim. The statute of limitations is tolled while the claim is pending and for 30 days after it is dismissed, unless state law provides for a longer tolling period. Section 1367(d) reads as follows:

The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

Tolling the applicable statute of limitations may reduce the pressure on a district court to hear a pendent claim. Now a court which desires to avoid exercising pendent jurisdiction due to the presence of one of the exceptions of section 1367(c) may do so without fear that the plaintiff will be denied the opportunity to proceed with the pendent claim in state court. Thus, the tolling provision reduces the pressure on a federal court to exercise jurisdiction over a pendent claim which it could otherwise dismiss under section 1367(c), and thereby preserves a plaintiff's right to proceed with the pendent claim in state court.

\textsuperscript{163} See supra note 22 for pertinent language from Gibbs.
mains to be seen. Clearly, this change goes further than merely restoring the law as it existed prior to *Finley*.

D. Effects of Section 1367 on Litigation

One way to demonstrate the effects of the codification of pendent jurisdiction is to determine the probable result of *Lockard* under section 1367. Since *Finley* would not have controlled, the court of appeals’ “affirmative grant” rule would have been inapplicable.

Most interesting is the issue of a district court’s discretion not to exercise pendent party jurisdiction. For purposes of illustration, assume the same facts in *Lockard* and assume that section 1367 is in effect. Further, assume that, instead of exercising pendent jurisdiction over Rosella Ray, the district court declines to exercise jurisdiction because it finds that the claims against Ray raise a novel or complex issue of state law. Under the facts of *Lockard*, such a finding by the district court would appear absurd, because the claims against Ray were simple negligence and loss of consortium claims. Yet in such a case, would an appellate court find an abuse of discretion by the district court for declining to exercise pendent party jurisdiction? If not, then perhaps district courts will be free to deny pendent party jurisdiction at their discretion merely by mentioning one of the four exceptions contained in section 1367(c).

Such a result appears to depart from the statutory intent. Congress intended section 1367(c) as an exception to the statute, which generally encourages federal courts to try related claims in a single action. The purpose behind the change was to give the district courts jurisdiction over pendent parties. It is up to the circuit courts to police the district courts to ensure that the exceptions found in subdivision (c) are faithfully interpreted as exceptions and not applied as the rule.

If section 1367 had been in effect at the time *Lockard* was decided, however, the Eighth Circuit Court of Appeals might not have had the opportunity to review the district court’s decision to exercise jurisdiction over the pendent party. The Eighth Circuit could have reversed the district court’s decision to exercise jurisdiction over the pendent party only if it believed that the case fell into one of the four exceptions found in section 1367(c). Even then, because subdivision (c) uses the language “may decline,” the decision as to whether

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166. For an explanation of why courts may not have complete discretion not to exercise pendent jurisdiction, see supra note 143.
167. See supra text accompanying note 158 (text of § 1367(c)).
one of the four exceptions applies is made by the trial court.\textsuperscript{168} For the court of appeals to overturn the district court’s decision to exercise pendent party jurisdiction, therefore, the court of appeals would have had to find an abuse of discretion. Consequently, the district court’s decision to exercise jurisdiction over the pendent party in \textit{Lockard} would most certainly be upheld if the case were decided today.

\textbf{CONCLUSION}

Whether the district and circuit courts will welcome the codification of pendent jurisdiction remains to be seen. For now, the doctrine of pendent party jurisdiction has left its troubled past behind. Because the court of appeals’ sweeping language in \textit{Lockard} temporarily signaled the end of pendent party jurisdiction in the Eighth Circuit, plaintiffs in the Eighth Circuit will be among the primary beneficiaries of the new law.

It is unlikely that any jurisdictional grant by Congress would have met the “affirmative grant” test adopted by the \textit{Lockard} majority. The court of appeals’ strained interpretation of the Supreme Court’s decision in \textit{Finley} unnecessarily restricted the rights of plaintiffs seeking relief in federal court. Fortunately, because Congress chose to act, those litigants who under \textit{Finley} and \textit{Lockard} faced the potential costs of bifurcated trials can now try their entire cases in federal court.

While Congress failed to act in time to help the Lockards, many future litigants will benefit. Those who will benefit the most are civil rights plaintiffs, who are typically least able to afford the cost of bringing two actions in separate judicial systems. If this is indeed the result, pendent party jurisdiction will once again serve to increase judicial efficiency and to promote equality in the federal court system.

\textit{Thomas Jamison}

\textsuperscript{168} \textit{Id.}